

# Exhibit A

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 10/14/2021 2:24 PM  
 IRIS Y. MARTINEZ  
 CIRCUIT CLERK  
 COOK COUNTY, IL  
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MELISSA MCGURREN,  Plaintiff,  HUBBARD RADIO CHICAGO, LLC  Defendant.	2021L010121 Case No.: _____  Jury Trial Demanded
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**COMPLAINT FOR DEFAMATION**

Plaintiff, MELISSA MCGURREN, by her attorneys, CARMEN D. CARUSO LAW FIRM, brings a complaint for defamation *per se* against Defendant HUBBARD RADIO CHICAGO, LLC.

**PARTIES**

1. Plaintiff Melissa McGurren is a resident of Cook County, Illinois.

2. Defendant Hubbard Radio Chicago, LLC is a Delaware limited liability company and operator of radio station WTMX-FM, having its principal place of business in Chicago, Illinois.

**JURISDICTION AND VENUE**

3. Under 735 ILCS/5/2-209(b)(2), the Court may exercise jurisdiction over Defendant as it does business in this State.

4. Venue is proper under 735 ILCS 5/2-101 because (1) the principal events giving rise to this Complaint took place in Cook County, Illinois, and (2) because Defendant does business in Cook County, Illinois.

### **CLAIM FOR DEFAMATION *PER SE***

5. Melissa McGurren (“Melissa”) worked for WTMX 101.9-FM (“The Mix”) for 22 years, rising from traffic reporter to co-host of the Mix’s most popular show: “Eric in the Morning with Melissa and Whip” (“the morning show”).

6. While Melissa was co-host, the morning show was often the top-rated morning radio show in Chicago among listeners between the ages of 25 and 54, which, for advertisers, is the key demographic segment. Eric Ferguson (“Ferguson”), the lead personality of the morning show, is the *de facto* boss of “Eric in the Morning” and acted as Melissa’s supervisor in this respect.

7. Because he is the station’s most successful on-the-air personality, The Mix, and its operator, Hubbard Radio Chicago, LLC (“Hubbard Radio”), treat Ferguson as though he is a “sacred cow” the station must never offend. Unfortunately, Ferguson abused his privileged status. Ferguson is a serial abuser of women, and, for many years, the management of the Station has protected Ferguson, and they have allowed him to continue perpetrating his misconduct that goes far beyond the limits of decency despite ample notice from Melissa and many of her co-workers at the Station that Ferguson’s behavior was unlawful.

8. Ferguson’s serial misconduct has led to several claims against both Ferguson and The Mix’s parent company: Hubbard Radio.

9. On December 30, 2020, Melissa filed a charge of discrimination with the EEOC. The EEOC issued a notice of right to sue to Melissa on May 26, 2021.

10. On June 24, 2021, Melissa filed a Demand for Arbitration with the American Arbitration Association based on conduct that occurred while she was employed by Hubbard Radio. A copy of Melissa's Demand for Arbitration, redacting all exhibits except for her EEOC charge, is submitted as **Exhibit 1**.

11. In her EEOC charge, Melissa stated:<sup>1</sup>

- a. Over the years Ferguson repeatedly made disparaging comments and otherwise harassed me based on my gender creating a hostile working environment. Ferguson's conduct as described in these sub-paragraphs became worse over the years; and became unbearable in 2019 and 2020 leading to my constructive termination in November and December 2020. Without limitation:
  - a. From 2005-2020, Ferguson frequently made derogatory and insulting comments on my physical appearance, including comments related to my breasts, my nipples, and my butt. He made these comments on the air, and off the air in the presence of my co-workers and me. He knowingly insulted me, leaving me traumatized and frozen with fear to be in his presence.
  - b. In or around April 2011, Ferguson coerced me to wear a bikini and get a spray tan at work, and Ferguson then posted (or caused a video to be posted) to Social Media despite my pleas to not do so. The coercion was that if I did not do what Ferguson was commanding, I risked losing my job. I succumbed to his pressure, and because of the Social Media post, I received many unwanted sexual comments from men on social media.
  - c. Often between the years 2009-2020, Ferguson made harassing comments about me leaving the broadcasting studio to go to the bathroom to deal with feminine issues.
  - d. In or about 2019, while broadcasting on-air, Ferguson accused me of having hot flashes in a demeaning and condescending tone.

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<sup>1</sup> See Exhibit 2 of Melissa's Arbitration Demand (Exhibit 1) at ¶3.

e. In or about 2019, while broadcasting on-air, Ferguson ridiculed my outfit (a leopard print sweater with my hair styled in a bun) by saying I looked like Ivana Trump, a woman in her 70s (about twenty years older than me). He then, over my objection, had someone take a picture of me and post it to social media asking viewers to vote on whether we looked alike. His ridicule continued off-air and he repeated this type of harassment on other occasions.

f. Between 2002 and 2006, Ferguson caused a social media person at the Station to take a picture of my medication at my personal desk and post it to social media despite my vocal objection. This was a gross invasion of my privacy.

g. Ferguson would yell at, harass, and/or demean me (often on-air while broadcasting) for doing things like clearing my throat, walking into the studio as a song was ending, misunderstanding something Ferguson said on air, or for simply talking in the studio while we were off-air. This occurred many times since 2010 and became worse in 2019 and 2020.

h. In May 2019, Ferguson also ridiculed my boyfriend on air, something he did not do to anyone else: not with men (as to their significant others) or to other women that did not make it clear, as did I, that I found his behavior intolerable.

i. Beginning in January 2019 and continuing through 2020, Ferguson (who had total control of the morning show), replaced me on “bits” or segments of the show in punishment for complaining about him (the retaliation against me is further discussed below). In early March 2020, during the Company retreat in Mexico, Ferguson publicly ridiculed my clothing and appearance throughout the trip. For example, he ridiculed a bathing suit I wore, which had long sleeves, by stating in front of a crowd of my co-workers, and fans, that I looked like an old lady. Similarly, he ridiculed me for a red jumpsuit I wore at a morning broadcast, and, again, this was in public in front of my co-workers.

12. Melissa also provided details of how she objected to Ferguson's behavior to the Mix's management. In her EEOC charge, Melissa stated (in part):<sup>2</sup>

- a. Over the years, I repeatedly brought my substantial objections to Ferguson's behavior to Station management and my superiors but no one in a position of authority did anything to cause Ferguson to change his terrible behavior. Without limitation:
  - a. On dozens of occasions from 2010 to 2018, when Mary Ellen Kachinske was the Station's program director, I repeatedly complained to Kachinske about Ferguson's inappropriate behavior and how his conduct created a hostile working environment. In response, Kachinske (who left the Station in 2018) admitted she wanted Ferguson to behave appropriately and professionally but stated on numerous occasions that nothing could be done because of Ferguson's importance to the Station, as higher management would not allow Kachinske to adequately manage Ferguson.
  - b. I also spoke to a former radio host that worked alongside Ferguson at the Station. This radio personality and I had hundreds of conversations about Ferguson's inappropriate behavior and the hostile working environment Ferguson's conduct created between 2006 and 2017.
  - c. Starting in or about April 2019, I spoke over ten times to Jimmy Steal, the Station's program director that replaced Kachinske (and who now has a larger title). These conversations began as early as April 2019, four months after Steal first arrived, and continued into 2020. When I first spoke to Steal, he was new to the Station and I hoped he would make immediate changes when I brought my concerns about Ferguson's conduct to him. I was disappointed, when, after first talking to Steal, nothing was done. In response to my complaints, Steal would tell me to brush off Ferguson's inappropriate and harassing behaviors by saying things like "that's just the way [Ferguson] is and all radio genius's act like that" or asking me why I let Ferguson

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<sup>2</sup> See Exhibit 2 of Melissa's Arbitration Demand (Exhibit 1) at ¶6.

bother me. After repeated conversations between 2018 and 2020 - which largely took place in his office or over the phone, Steal took no action to remedy the hostile work environment caused by Ferguson. Steal's comments exacerbated my stress as he tried to convince me I needed to change and not Ferguson. As a result I became more anxious because the program director wasn't willing to help.

- d. From 2016 to 2020, I also spoke often to John Swanson (the Station producer), Dave Karwowski (the Station marketing director), and Brian Paruch (the Station on air morning news man) about my complaints about Ferguson. These men knew I believed I was subject to an unlawful hostile working environment and disparate treatment.
- e. I know that Swanson, Karwowski and Paruch also spoke to Program Director Jimmy Steal (as did I) about my complaints and the hostile work environment created by Ferguson; and I know that Drew Horowitz (the Station Manager) knew of Ferguson's inappropriate behavior. None of these men intervened to stop it.
- f. Jeff England, VP and market manager for Hubbard Radio's three stations including The Mix, was also aware of Ferguson's inappropriate behavior and did nothing to stop it.
- g. Ferguson's discriminatory, harassing, demeaning and hostile behavior as described above was open and notorious in the Station and amongst Station personnel, but as I have stated, no one did anything. The common response was that we all needed to "protect the quarterback," meaning Ferguson.

13. In addition, Cynthia DeNicolo, a former Assistant Producer at The Mix assigned to "Eric in the Morning," filed suit against Eric Ferguson on May 14, 2021. This case—*DeNicolo v. Ferguson*—is pending in the Cook County Circuit Court as Case No. 2021 L 005012 (hereinafter referred to as the "*DeNicolo v. Ferguson*" case).

14. In *DeNicolo v. Ferguson*, DeNicolo alleges that Ferguson committed the torts of intentional infliction of emotional distress and intentional interference with prospective economic advantage, causing injury to DeNicolo, based on the following verified fact allegations summarized here, without limitation:

- a. In 2000, fresh from college, Cynthia took her first “career job” at “The Mix” radio station, where Ferguson was, and remains, a prominent radio personality. (¶¶ 13-14)<sup>3</sup>
- b. From 2000, when she began her job, until her termination on May 1, 2020, Cynthia was never promoted. (¶16).
- c. Unknown to Cynthia, Ferguson was a serial abuser of women who repeatedly cheated on his wife and exploited his fame to obtain sexual favors. (¶¶ 3, 38, 45).
- d. From 2000 to 2020, Ferguson was DeNicolo’s boss, and Ferguson maintained power and control over DeNicolo including but not limited to the *de facto* power to advance or end DeNicolo’s career in radio – not just at the Mix, but, as DeNicolo reasonably feared, in radio generally. (¶17).
- e. Ferguson quickly sought to exploit Cynthia. Telling her that she was replaceable, she needed to “pay her dues” and that he could make or break her career in radio, Ferguson demanded that Cynthia perform oral sex on him. (¶¶ 19-31).
- f. In or about January 2004, after they both attended a different company sponsored event, Ferguson ... insisted that he drive DeNicolo home. ... Ferguson, without DeNicolo’s consent, touched DeNicolo inappropriately, kissed her, and coerced her into performing oral sex. (¶ 24).
- g. From January 2004 until August 2004, Ferguson continued to abuse his power over DeNicolo by coercing her into performing oral sex approximately twice a month. This coerced sexual activity typically

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<sup>3</sup> “¶” refers to paragraph citations of Cynthia’s Verified Complaint in *DeNicolo v. Ferguson*, filed May 14, 2021.

occurred after a company sponsored work event or after the workday in DeNicolo's apartment. (¶ 25).

- h. To inform Cynthia he wanted and expected her to perform oral sex, Ferguson employed code words: "*I need a back-rub.*" (¶25). Cynthia succumbed to this pressure and repeatedly performed oral sex on Ferguson for about seven months until August 2004 when she summoned the courage to refuse Ferguson's demand for sexual favors, causing her, on that occasion, to run from Ferguson's hotel room to avoid his wrath. (¶32). These acts of oral sex were purely sexual; there was no pretense of emotion (¶¶ 27-28), nor were these acts of oral sex consensual. Ferguson exploited his dominant position at work to coerce a subordinate to perform sexual acts that she would not have otherwise performed. (¶¶ 24-29, 32). The coerced sexual activity in 2004 damaged Cynthia emotionally. (¶¶ 26, 29).
- i. Although Cynthia summoned the fortitude in 2004 to resist Ferguson's demands for oral sex, Ferguson continued to demand oral sex from Cynthia, at work as late as January 2020 by continuing to demand "backrubs," which Ferguson knew that Cynthia knew was his code word, at least with her, for demanding oral sex. (¶¶ 26, 33, 40).
- j. Ferguson's continuing demands for oral sex from 2004 to 2020 inflicted continuing emotional distress on Cynthia, just as Ferguson intended. Cynthia never knew when Ferguson would next ask for a "back-rub." (¶¶ 41-43).
- k. Intentionally adding to Cynthia's humiliation and suffering, Ferguson would sometimes ask for "back-rubs" when other employees at The Mix were in the room. (¶40).
- l. Intentionally adding to Cynthia's humiliation and suffering, Ferguson used Cynthia to baby-sit his children in his home (before he became divorced from their mother). This put Cynthia in an impossible position (caring for the children of an abuser) that greatly added to her emotional distress. (¶38).
- m. Further exploiting what he clearly knew to be his power over Cynthia, Ferguson used his influence at The Mix to hold Cynthia back in her career. She did not receive the raises or promotions she should have, but Cynthia, fearing Ferguson would destroy her in the radio industry

(a relatively small world), if she complained or tried to escape to another station, suffered in silence. (¶¶ 16, 30-31, 34, 37).

- n. Further exploiting what he clearly knew to be his power over Cynthia, Ferguson admitted to Cynthia that he feared another woman employed by The Mix was preparing to accuse Ferguson of sexual harassment, and he warned Cynthia to stay silent and deny any allegations against him made by other women. (¶44). Cynthia reasonably believed Ferguson was threatening Cynthia's job at The Mix if Cynthia substantiated a complaining woman's report of sexual harassment (which Ferguson knew that Cynthia could easily do) or if Cynthia brought her own complaint forward. (¶44).
- o. In all these ways, Ferguson intentionally and continuously inflicted emotional distress on Ferguson for nearly 17 years until The Mix invoked an involuntary employment termination program in response to the COVID-19 pandemic on May 1, 2020. Ferguson seized this opportunity to rid himself of a liability, so he arranged for Cynthia to be included in the termination. (¶¶ 47-48).

15. DeNicolo also alleges in *DeNicolo v. Ferguson* that:

Ferguson made it plain to all employees at The Mix that he was in charge of his morning show and makes all the decisions affecting the show, including personnel decisions. DeNicolo knew, for example, that:

- a. The Mix gave Ferguson the right to choose his staff; Ferguson forced DeNicolo and other morning show staff members to take a personality test to determine their fit on the show;
- b. Ferguson held complete control over how much DeNicolo would be integrated into the show or replaced;
- c. Ferguson had influence, if not control, over DeNicolo's salary, bonus, advancement, etc.;
- d. Ferguson could assign and approve DeNicolo's ability to earn additional income through special assignments and appearances; and
- e. Ferguson stated that all decisions as it relates to the morning show go directly through him."

(¶23).

16. DeNicolo also alleges in *DeNicolo v. Ferguson* that:

In 2017, Ferguson admitted to DeNicolo he feared another woman employed by The Mix was preparing to make allegations of sexual harassment against him. Ferguson told DeNicolo “we need to circle the wagons” and “get our stories straight.” He told her to stay silent and to deny any allegations by other women that Ferguson had engaged in inappropriate behavior. DeNicolo reasonably understood Ferguson was threatening her employment if word of his serial sexual harassment became public.

(¶44).

17. DeNicolo also alleges in *DeNicolo v. Ferguson* that:

By 2019, Hubbard Radio (by then the owner of The Mix) knew Ferguson was a serial sexual predator but decided to protect Ferguson to avoid losing the financial benefit his top-rated “Eric in the Morning” show brought to the station. The employer’s decision to try to keep secret Ferguson’s serial misconduct emboldened Ferguson, who by then appeared to believe he was invincible. This in turn heightened DeNicolo’s emotional distress.

(¶45).

18. On September 30, 2021, DeNicolo filed a Complaint for Defamation against Hubbard Radio Chicago, alleging a statement published by Hubbard Radio stating that there was no evidence corroborating the allegations contained in DeNicolo’s verified complaint in *DeNicolo v. Ferguson* was defamatory. This case—*DeNicolo v. Hubbard Radio Chicago LLC*—is pending in the Cook County Circuit Court as Case No. 2021 L 009708 (hereinafter referred to as the “*DeNicolo v. Hubbard Radio*” case).

19. On October 5, 2021, Robert Feder posted a copy of an email written by Jeff England, the Vice President and Market Manager of Hubbard Radio, to all (or

most) staff at The Mix concerning Melissa. The article, published on Feder's blog, is submitted as **Exhibit 2**.

20. Hubbard Radio authorized Jeff England to publish this written statement to all or most employees at The Mix, including many persons who know Melissa and whose friendships she values.

21. Jeff England's email to The Mix's employees, as published by Robert Feder on October 5, 2021, is recopied below:

(Remainder of page left blank intentionally)

Good afternoon,

I want you to hear this from me first. Later today, we are anticipating another round of media stories about Eric's situation – including the contents of a complaint made by Melissa McGurren to the EEOC. This is not a new development, and we've thoroughly investigated this matter previously. Suffice it to say that we do not agree with Melissa's characterization of events, but we are committed to following the appropriate process and not litigating this matter in the public or the press. We continue to wish Melissa well in her endeavors.

We have made the decision that Eric will not be on the air through October. We take these allegations seriously and we are confident in the results of multiple investigations we have initiated. But we also owe it to ourselves and our listeners to have a deliberate and thoughtful process about our path forward, and candidly we are not there yet.

I want to take a moment to thank this team for your continued professionalism amid all this. I know this has been a difficult situation, but through it all, you are continuing to show up to work each day and deliver quality programming to our listeners while serving our communities and advertisers. I can't tell you how much I appreciate that. I always want you to be able to be proud to work at Hubbard Chicago, and please know that we have no higher priority than creating and maintaining a safe workplace culture that celebrates all our collective contributions and creativity.

As always, we have an open-door policy, so please don't hesitate to drop a line. I appreciate your trust, openness, and cooperation—and I hope you will always expect the same from me.

Jeff

22. Defendant Hubbard Radio's published statement as alleged in paragraph 21 is false and defamatory to Melissa McGurren.

23. Jeff England made the statement alleged in paragraph 21 as an agent of Hubbard Radio, which is liable for this statement.

24. Hubbard Radio's published statement, particularly: "... we've thoroughly investigated this matter previously. Suffice it to say that we do not agree with Melissa's characterization of events..." falsely calls Melissa a liar and attacks Melissa's credibility and integrity. This is defamation *per se*.

25. In addition, Hubbard Radio's apparent investigation, from which it formed the basis of its disagreement with Melissa's characterization of the events described in her EEOC charge per Hubbard Radio's published statement, was never conducted, or, at minimum, was a sham investigation. This allegation is confirmed by the Declaration of Jennifer Ashrafi (a/k/a Jennifer Roberts), a former "on-the-air" employee of The Mix who was a colleague of Ferguson and Melissa, among others, which is submitted as **Exhibit 3**.

26. Jennifer Ashrafi was a former co-host of the weekday afternoon radio show at The Mix until she quit in January 2020 because she "was disgusted by the atmosphere of misogyny, gender discrimination, and hostile work environment that was pervasive at The Mix." (Exhibit 3 at ¶¶ 2-3).

27. In January 2020, Jennifer Ashrafi told Jeff England (the author of the defamatory statement alleged in paragraph 21), without limitation, that:

- a. "You have a problem with women at this company" in reference to the way women are mistreated by Eric Ferguson and by other men in management [at The Mix]."

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- b. “[Ashrafi] was leaving because The Mix does not treat [her] or any women with respect, doesn’t pay [women] fairly, and it has become impossible to stay [at The Mix] in a hostile, humiliating atmosphere.”
- c. To better understand the toxic hostile work environment against women at The Mix, Jeff England should “start with the morning shows”, meaning “Eric in the Morning,” where Melissa was one of the three women working. Ashrafi warned Jeff England he might not be so “lucky” to have these other women, on the morning shows, simply quit and walk away without suing.

*Id.* at ¶7.

28. Despite Jeff England being given direct notice of problems at The Mix and specifically on “Eric in the Morning” in January 2020, he and The Mix took no actions to protect the women on Eric in the Morning. Furthermore The Mix failed to interview Jennifer Ashrafi in connection with any “investigation” it claims to have conducted in response to Melissa’s allegations in her December 2020 EEOC charge and/or her Demand for Arbitration. *Id.* at ¶10.

29. Hubbard Radio’s statement in paragraph 21, in which England wrote “[Hubbard Radio] thoroughly investigated [the contents of a complaint made by Melissa McGurren to the EEOC] previously,” is false. A thorough investigation would have uncovered that Jennifer Ashrafi brought many of these same issues that corroborate Melissa’s “characterization of events” to England in January 2020, months before Melissa filed her charge with the EEOC.

30. Despite knowing Melissa's "characterization of events" to be credible, Hubbard Radio published the defamatory statement in paragraph 21 stating otherwise, maliciously intending to injure Melissa and jeopardize her new career. At least one reader of Robert Feder's October 5, 2021 article, which posted Hubbard Radio's statement alleged in paragraph 21, read the statement as calling Melissa a liar, *Id.*, and there are likely countless more readers who read the statement the same way.

31. Beginning on or about May 10, 2021, Melissa began work for a new station, WUSN 99.5-FM, working as a co-host on the program "Melissa and Austin" from 6:00 to 9:00 a.m. on weekdays.

32. "Melissa and Austin" competes directly with "Eric in the Morning," and the two shows seek the same Chicago morning radio market.

33. As a current on-the-air personality for WUSN 99.5-FM, Melissa's integrity and reputation for truthfulness is essential to her profession. As an on-the-air radio personality, Melissa is responsible for maintaining integrity and the public's trust as part of her job duties.

34. By making the statement alleged in paragraph 21, Hubbard Radio intended to portray Melissa as undeserving of the public's (i.e., her listeners') trust. The statement alleged in paragraph 21 prejudices Melissa in her profession as a radio personality and is defamation *per se*.

35. Because of Hubbard Radio's defamation *per se*, Melissa is presumptively injured and damaged.

36. In making the statement alleged in paragraph 21, Hubbard Radio intended to injure Melissa personally and professionally.

37. In making the statement alleged in paragraph 21, Hubbard Radio exhibited actual malice to Melissa, hoping that she be falsely branded as a liar so it, Hubbard Radio, can continue to keep a serial sexual abuser employed and profit from “Eric in the Morning” at the expense of Melissa and all other women whom Ferguson has abused and exploited.

38. In making the statement alleged in paragraph 21, Hubbard Radio intentionally, directly, and proximately injured Melissa, whose injuries include actual damages to her personal and professional reputation and future earning potential in amounts to be determined at trial.

39. Additionally, in making the statement alleged in paragraph 21, Hubbard Radio intentionally, directly, and proximately caused Melissa to suffer emotional distress for which Melissa must be compensated and made whole.

40. The Defendant’s conduct warrants the imposition of punitive damages in an amount to be determined at trial sufficient to punish the Defendant and deter others from like misconduct. The jury in this case must be given the opportunity to send the unmistakable message that corporate America may not tolerate sexual harassment to protect its revenue stream and may not engage in defamation against brave and credible women who take legal action against serial sexual abusers like Eric Ferguson. Punitive damages should not be less than \$10,000,000.

**PRAYER FOR RELIEF**

**WHEREFORE**, Melissa McGurren prays for judgment against Defendant HUBBARD RADIO CHICAGO, LLC for damages to reputation in such amount as the jury may determine; for damages for emotional injury; for punitive damages in an amount sufficient to punish the Defendant and deter others from like misconduct; for costs of suit; and for such further relief as the Court deems just and proper.

**JURY DEMAND**

Melissa McGurren demands trial by jury of twelve persons.

October 14, 2021

Respectfully submitted,

MELISSA MCGURREN, PLAINTIFF

By: /s/ Carmen D. Caruso  
*One of her Attorneys*

**Attorneys for Plaintiff:**

Firm No. 36033

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<sup>4</sup> Best way to contact during COVID.

**IN THE CIRCUIT COURT OF COOK COUNTY  
COUNTY DEPARTMENT, LAW DIVISION**

<b>MELISSA MCGURREN</b>	
<b>Plaintiff,</b>	
<b>vs.</b>	<b>No:</b> 2021L010121
<b>HUBBARD RADIO CHICAGO, LLC</b>	<b>JURY TRIAL DEMANDED</b>
<b>Defendant.</b>	

**AFFIDAVIT PURSUANT TO SUPREME COURT RULE 222(b)**

This affidavit is made pursuant to Supreme Court Rule 222(b). Under penalties of perjury as provided by §1-109 of the Codes of Civil Procedure, the undersigned certifies that the money damages sought by the Plaintiff herein exceed \$50,000.

October 14, 2021 Respectfully submitted,

MELISSA MCGURREN, PLAINTIFF

By: /s/ Carmen D. Caruso

By Her Attorneys:

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# EXHIBIT 1

**AMERICAN ARBITRATION ASSOCIATION**

**MELISSA MCGURREN,**

**Claimant,**

**vs.**

**HUBBARD RADIO CHICAGO, LLC**

**Respondent.**

**DEMAND FOR ARBITRATION**

Pursuant to the Employment Rules of the American Arbitration Association, Claimant Melissa McGurren (“McGurren”) asserts claims in arbitration against Hubbard Radio Chicago, LLC (“Hubbard Radio”) for its violations of Title VII of the Civil Rights Act of 1964, as amended (“Title VII”); the Illinois Human Rights Act (“IHRA”); the American Disabilities Act (“ADA”); the Equal Pay Act (“EPA”); common law defamation; and common law intentional infliction of emotional distress.

**PARTIES**

1. Claimant Melissa McGurren, a female who resides in Riverside, Illinois, was, until on or about December 16, 2020, the co-host of WTMX-FM’s (“the Mix’s” or “the Station’s”) top rated morning show entitled “Eric in the Morning with Melissa and Whip.”

2. Respondent Hubbard Radio Chicago, LLC is a Delaware limited liability company and operator of radio station WTMX-FM, having its principal place of business in Chicago, Illinois.

### **AGREEMENT TO ARBITRATE**

3. On October 4, 2016, the parties entered into the Employment Agreement attached as **Exhibit 1**. Section 6, entitled “Arbitration Agreement,” states in part: “...Employer and Employee agree that all claims and disputes between Employer and Employee shall be decided by arbitration before a single arbitrator in accordance with the Employment Rules of the American Arbitration Association (“AAA”) then in effect, unless Employer and Employee both agree otherwise in writing.” Exhibit 1 at § 6.1.

4. Section 6.4.2 of this Agreement provides: “...Employer will pay all AAA administrative charges and filing fees for both sides, *LESS* the amount of the federal district court complaint filing fee in the locale where the arbitration is venue, which amount shall be paid by Employee to the AAA.” Exhibit 1 at § 6.1.2(b).

5. McGurren relies on Section 6.4.2 and tenders the filing fee for a complaint in the United States District Court for the Northern District of Illinois.

### **BACKGROUND**

6. Claimant Melissa McGurren has worked in the radio industry for her whole career. In her 22-year career at WTMX 101.9-FM (“the Station” or “The Mix”) that is now owned by Respondent Hubbard Radio Chicago, LLC (“Hubbard Radio” or

“the Company”), McGurren rose from traffic reporter to co-host of the Station’s top rated morning show called “Eric in the Morning with Melissa and Whip.”

7. “Eric in the Morning with Melissa and Whip” (“the morning show”) is the most popular show on The Mix and is often the top-rated morning radio show in Chicago among listeners between the ages of 25 and 54, which, for advertisers, is the key demographic segment. Eric Ferguson (“Ferguson”) is the *de facto* boss of the morning show and was McGurren’s supervisor in this respect.

8. Because he is the station’s most successful on-the-air personality, the Mix, and its operator Hubbard Radio, treats Ferguson as though he is a “sacred cow” the station must never offend. Unfortunately, Ferguson has abused his privileged status. Ferguson is a serial abuser of women, and, for many years, the management of the Station has protected Ferguson, and they have allowed him to continue perpetrating his misconduct that goes far beyond the limits of decency despite ample notice from McGurren and many of her co-workers at the Station that Ferguson’s behavior was unlawful. Ferguson’s misconduct, and Hubbard Radio’s knowing unwillingness to stop it, form the basis of these claims.

9. On December 30, 2020, Melissa McGurren filed a charge of discrimination with the EEOC, attached as **Exhibit 2**.

10. On May 26, 2021, the EEOC issued notice of right to sue to McGurren, attached as **Exhibit 3**. McGurren’s claims are timely under this right to sue.

**TITLE VII CLAIMS**

11. In support of her Title VII claims in arbitration for hostile work environment, retaliation, and disparate treatment, McGurren incorporates her charge in the EEOC including her Statement of Particulars.

#### **ILLINOIS HUMAN RIGHTS ACT CLAIMS**

12. In support of her IHRA claims in arbitration for hostile work environment, retaliation, and disparate treatment, McGurren incorporates her charge in the EEOC including her Statement of Particulars.

#### **AMERICANS WITH DISABILITIES ACT CLAIM**

13. In support of her ADA claims in arbitration, McGurren incorporates her charge in the EEOC including her Statement of Particulars.

#### **EQUAL PAY ACT CLAIM**

14. McGurren, a female, was intentionally paid less than men in similar or comparable positions who were doing the same or substantially equal work in violation of the Equal Pay Act (“EPA”), 29 U.S.C.A. § 206(d). *See Exhibit 2 at ¶20.*

15. Brian Paruch, who went by the nickname “Whip” on “Eric in the Morning with Melissa and Whip,” was paid the same or nearly the same as McGurren by the Company despite working nearly 10 (ten) years less than McGurren and despite being less popular (in terms of social media followers) than McGurren in the eyes of the Morning show’s fanbase.

16. These facts will be born out in discovery.

#### **COMMON LAW DEFAMATION PER SE**

17. On or about December 16, 2020, Hubbard Radio released a statement that said, "The Mix is sad to announce that after 22 years with the station, Melissa McGurren was offered a contract extension which much to our surprise she declined." This statement was copied and published in an article written by Robert Feder, a Chicago journalist that covers the media. A copy of the Feder article, dated December 16, 2020, is attached as **Exhibit 4**.

18. On or about the same day, both Eric Ferguson and Jeff England (vice president and market manager at Hubbard Radio) made statements to Feder, commenting on McGurren's departure from The Mix. In the Feder article (Exhibit 4):

- a. Ferguson is quoted by Feder as saying: "I was surprised and disappointed when I heard the news, but I think it is important to be supportive when someone chooses to do something different in life."
- b. England is quoted by Feder as saying; "Our plans for the future of 'Eric in the Morning' definitely included Melissa. We were disappointed by her decision not to renew her contract, but also knew that this year has led all of us to assess our lives in different ways ...".

19. Hubbard Radio's statement, Ferguson's comment, and England's comment were intended to paint McGurren in a false light.

20. Hubbard Radio's statement, Ferguson's comment, and England's comment, all made on or about December 15, 2020, were made despite Hubbard Radio's and the individual's knowledge that - by December 3, 2020, at the latest -

McGurren would not return to the Station unless she had adequate assurance there would be no further harassment, hostile work environment, or any other unlawful conduct from Ferguson. *See Exhibit 2 at ¶14.*

21. Hubbard Radio, Ferguson, and England made their quoted statements with the intent that Feder (and others) publish their statements to the broadest audience possible.

22. Hubbard Radio, Ferguson, and England made their quoted statements to Feder (and others) with the intent of continuing to cover-up Ferguson's serial harassment and the station's tacit approval of Ferguson's conduct, revealed by the Station's failure to stop it, which they knew to be the true reason why McGurren was leaving the station.

23. Hubbard Radio, Ferguson, and England made their quoted statements to Feder (and others) with the intent of presenting McGurren in a false light to the public as to the reasons why she was leaving the station and to damage McGurren's professional reputation in the radio industry.

24. Hubbard Radio, Ferguson, and England - through their statements - purposefully intended to imply and did imply that McGurren left "The Mix" for reasons unrelated to the rampant and insidious serial harassment perpetrated by Ferguson and condoned by England. By insinuating that McGurren's refusal to renew her contract "surprised" Ferguson or "disappointed" England, these Defendants were painting McGurren in a false light - one in which she was not forced

to leave “The Mix” due to England’s, Ferguson’s, and the station’s management’s refusal to stop Ferguson’s continued harassment.

25. Hubbard Radio’s, Ferguson’s, and England’s statements were defamatory *per se* because the statements injured McGurren in her trade or occupation. Specifically, but without limitation:

- a. By stating Hubbard Radio was “surprised” McGurren declined the contract extension, Hubbard Radio implied that (1) it was not aware of the many accusations and reports of sexual harassment McGurren made to the Mix’s and Hubbard Radio’s management and human resources department; and (2) that Hubbard Radio’s unwillingness to do anything to remedy Ferguson’s harassment, the hostile working environment, and the retaliation had nothing to do with McGurren’s departure. McGurren’s fan base, which takes years to cultivate, was left with the impression McGurren abandoned them because of a contract dispute and/or because she wanted more money from the Station, and not that McGurren was forced out due to workplace harassment.
- b. By stating he “was surprised and disappointed when [he] heard the news, but [he] think[s] it is important to be supportive when someone chooses to do something different in life,” Ferguson implied that (1) he was not aware of the many accusations and reports of sexual harassment McGurren made to him and to other managers, and (2) that McGurren was choosing to do something different in life, *i.e.*, leave radio.

McGurren's fan base, which takes years to cultivate, was left with the impression that McGurren left radio altogether (a lie) because of (without limitation) McGurren's unhappiness with her contract, as opposed to the truth that Ferguson's conduct (and the Company's refusal to do anything about Ferguson's conduct) forced McGurren to leave the Station.

c. By stating, "our plans for the future of 'Eric in the Morning' definitely included Melissa ... We were disappointed by her decision not to renew her contract, but also knew that this year has led all of us to assess our lives in different ways..." England similarly implies that McGurren left because she wanted to leave radio (a lie) because of (without limitation) McGurren's unhappiness with her contract, and not that England's (and other management's) refusal to do anything about Ferguson's conduct that McGurren repeatedly complained of. McGurren's listeners and fans were left with the impression that McGurren abandoned them because (without limitation) the Station was not paying her enough money, and not that England's inaction in stopping Ferguson's sexual harassment drove her away.

26. Because Hubbard Radio's, Ferguson's, and England's statements are defamation *per se*, McGurren is presumptively injured and damaged.

27. In making these statements, Hubbard Radio, Ferguson, and England:

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- a. Intended to injure McGurren personally and professionally, making it seem like she left for personal or financial reasons as opposed to being forced away;
- b. Exhibited actual malice as all three were aware of the real reason McGurren chose not to resign her contract: Ferguson's unchecked serial harassment; and
- c. Directly and proximately injured McGurren including actual damages to her personal and professional reputation and future earning potential in amounts to be determined at hearing, and actual damages for emotional injuries and physical ailments caused by emotional stress.

#### **COMMON LAW DEFAMATION PER QUOD**

- 28. McGurren incorporates ¶¶17-27 as though stated herein.
- 29. The statements made by Hubbard Radio, Ferguson, and England damaged McGurren's reputation.
- 30. Members of McGurren's fan base who viewed the statements were left with the impression that McGurren left The Mix for untrue reasons as intended by Hubbard Radio, Ferguson, and England, such as (without limitation) McGurren's greed in contract negotiations or The Mix deciding to replace McGurren with another female announcer.
- 31. These reasons are a far cry from the true reasons for McGurren's exit: Hubbard Radio's and the Station's unwillingness to put a stop to Ferguson's harassment.

32. McGurren has been injured as the direct and proximate result of the defamatory statements made by Hubbard Radio, Ferguson, and England. Her injury includes (without limitation) damages to her professional reputation, damages to her future earning potential, and actual damages for emotional injuries and physical ailment caused by emotional stress - all in amounts that will be determined at hearing.

#### **COMMON LAW INTENTIONAL INFILCTION OF EMOTIONAL DISTRESS**

33. Eric Ferguson, a very popular radio personality with a large audience, repeatedly harassed McGurren, both on air for all the listeners and consumers of the Morning Show's content (including content on social media) and off air in front of McGurren's co-workers and colleagues, for years. *See Exhibit 2 at ¶¶ 3, 8-11.*

34. Ferguson's conduct constituting intentional infliction of emotional distress included more than just conduct related to his sexual discrimination of McGurren, it also included emotional and psychological torment. On November 24, 2020, McGurren emailed the Station's human resources representative, who also worked for Hubbard Radio, a comprehensive list describing Ferguson's harassment that included far more than just harassment based on sex. *See Exhibit 2 at ¶11 (and the exhibit referenced therein).* As McGurren stated in the November 24, 2020, email, "I've been mentally and verbally abused, harassed, put into tears, yelled at, belittled, ignored, mocked and my job has been threatened multiple times." *Id.*

35. In addition, and not included in McGurren's email of examples that was sent to Hubbard Radio on November 24, 2020:

a. On December 9, 2019, Ferguson, while broadcasting on air, berated McGurren for showing up to work in a good mood while he was in a bad mood. Ferguson then forced McGurren to walk to her car, turnaround, and walk back to the Station so she could start her day over again. Ferguson ordered the Mix's social media team to film McGurren while she was making this walk of shame, and to post the video to social media. Ferguson's conduct this day humiliated McGurren, as Ferguson intended. The Station eventually removed the video from social media after the post generated a negative reaction from the Morning Show's fans;

b. Ferguson admonished McGurren for socializing with fellow Morning Show co-host Brian Paruch (known as "Whip") outside of the studio. Ferguson went so far as calling McGurren and Paruch into his office to order McGurren and Paruch not to each lunch together or talk to each other when leaving the Station;

c. Ferguson harassed McGurren about her clothes, often telling her what to wear or telling McGurren he did not like her outfits;

d. Ferguson repeatedly threatened McGurren with termination over the course of her employment, including (without limitation) threatening to have McGurren fired if she did not move from the suburbs to the city of Chicago (which McGurren did, fearing Ferguson would act on his threat), and threatening to fire McGurren when she did not attend a

Company Christmas Party that conflicted with her son's ninth birthday party; and

- e. Ferguson publicly berated McGurren by calling her lazy or stupid, including (without limitation) once while in front of McGurren's co-workers, he told McGurren, "You really are a fish in a fishbowl"; accusing her of not making work her priority or of not caring about work; and for other minor "infractions" in Ferguson's mind as stated in McGurren's email to HR (Exhibit 2).

36. As the lead on the "Eric in the Morning" radio show, Ferguson also amplified his harassment of McGurren through broadcasting his demeaning insults to the show's listeners or posting, on social media, images or videos (over McGurren's objections) that ridiculed McGurren. These harassing comments were heard and viewed by the Morning show's many fans.

37. Ferguson was aware that his conduct caused McGurren severe emotional distress. McGurren complained to Ferguson about it several times, but Ferguson not only ignored McGurren, but he also would not allow McGurren to speak when she tried to talk to him about her concerns. Ferguson would do this by raising his hand in front of her face - "to shush her" as Ferguson described this gesture - or by yelling at McGurren that (in words or substance) she did not know what she was talking about. Ferguson refused to listen to McGurren, and he did not alter his conduct. Ferguson was also aware that McGurren complained to management, including Jeff England and Jimmy Steal, Vice President of Brand and Content at

Hubbard Radio. Ferguson knew his conduct - much of which was broadcasted to McGurren's fans - was causing McGurren severe emotional distress yet did not stop.

38. Ferguson's conduct caused McGurren to suffer severe emotional distress. His conduct rose to such a level to render her place of work unbearable, forcing her to leave a job she loved and excelled in. McGurren also suffers severe emotional distress that has manifested in physical symptoms such as depression, anxiety, insomnia, bouts of crying, and panic attacks. McGurren has sought treatment through therapy as a result.

39. A reasonable trier of fact would conclude that Ferguson's conduct - actively and continuously subjecting McGurren to a hostile work environment through constant harassment, ridiculing McGurren on-air to the show's many listeners, and feigning surprise at McGurren's exit while knowing that his conduct was the cause of McGurren's departure - was outrageous and intolerable in a civilized community.

40. Hubbard Radio is liable for the tortious acts of its agent, Eric Ferguson. Furthermore, Hubbard Radio was aware of Ferguson's harassment of McGurren and did nothing to prevent it.

41. Ferguson's conduct and Hubbard Radio's failure to stop it were intentional. Actual damages in an amount sufficient to redress McGurren's emotional distress are necessary, and punitive damages should be awarded to punish Hubbard Radio for its behavior and to deter future misconduct.

**PRAYER FOR RELIEF**

WHEREFORE, on each of her claims, separately and combined, Claimant Melissa McGurren respectfully requests that the Arbitrator enter an Award in Claimant's favor and against Respondent Hubbard Radio, awarding:

A. All damages, equitable remedies, costs, disbursements, attorney fees and other forms of relief that are available under the law, including:

1. Back pay, including wages and benefits lost, as a result of Respondent's discrimination in an amount to be determined;
2. Front pay in an amount to be determined.

B. Other compensatory damages to the fullest extent permitted by law.

C. Punitive damages in an amount sufficient to punish Hubbard Radio and deter others from like misconduct;

D. Liquidated damages (for McGurren's claim under the Equal Pay Act); and

E. Such other and further relief the Arbitrator deems just and proper.

Dated: June 24, 2021

Respectfully submitted,

**Melissa McGurren**

By: /s/ Carmen D. Caruso

Carmen D. Caruso - [cdc@cdcaruso.com](mailto:cdc@cdcaruso.com)  
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# **Exhibit 1**

McGurren Arbitration Demand

**Exhibit**  
**Intentionally Removed**

## **Exhibit 2**

McGurren Arbitration Demand

Received by EEOC CDO 12/30/2020  
**CHARGE OF DISCRIMINATION**

This form is affected by the Privacy Act of 1974; See Privacy Act Statement before completing this form.

AGENCY

	FEPA
X	EEOC

CHARGE NUMBER

**440-2021-01572**

## U.S. Equal Employment Opportunity Commission

State or local Agency, if any

S.S. No.

NAME (Indicate Mr., Ms., Mrs.)

Ms. Melissa McGurren

HOME TELEPHONE (Include Area Code)

773-620-6354

STREET ADDRESS

430 Kent Road

CITY, STATE AND ZIP CODE

Riverside, Illinois 60546

DATE OF BIRTH

10/7/1969

NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME (If more than one list below.)

NAME

Hubbard Radio Chicago, LLC

NUMBER OF EMPLOYEES, MEMBERS

500+

TELEPHONE (Include Area Code)

312-946-1019

STREET ADDRESS

130 East Randolph, Ste. 2700, Chicago, Illinois, 60601

CITY, STATE AND ZIP CODE

COUNTY

Cook

NAME

TELEPHONE NUMBER (Include Area Code)

STREET ADDRESS

CITY, STATE AND ZIP CODE

COUNTY

CAUSE OF DISCRIMINATION BASED ON (Check appropriate box(es))

  


RACE

  


COLOR

  


SEX

  


RELIGION

  


AGE

  


RETALIATION

  


NATIONAL

  


DISABILITY

  


Hostile Work Environment

ORIGIN

DATE DISCRIMINATION TOOK PLACE

EARLIEST (ADEA/EPA)

LATEST (ALL)

2005

Present

  


CONTINUING ACTION

THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)):

See attached statement of particulars.

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or telephone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

NOTARY - (When necessary for State and Local Requirements)

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

I declare under penalty of perjury that the foregoing is true and correct.

SIGNATURE OF COMPLAINANT

12 / 30 / 2020

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE  
(Day, month, and year)

Date

Charging Party (Signature)

Received by EEOC - CDO 12/30/2020

Statement of Particulars by Charging Party (Melissa McGurren)  
In the United States Equal Employment Opportunity Commission (Chicago)  
December 30, 2020  
Page 1 of 8

My name is Melissa McGurren. I live in Riverside, Illinois, and I am a Caucasian female. For the past 23 years, I have worked at the radio station WTMX-FM (“the Station” or “The Mix”) that is owned by Hubbard Radio Chicago, LLC (“the Company”). Most recently, I was an announcer on “The Mix” along with my co-host Eric Ferguson.

I contend that Eric Ferguson is a serial abuser of women and that for many years, the management of The Mix has protected Ferguson in allowing him to continue in perpetrating his misconduct that goes far beyond the limits of decency despite ample notice from me and many of my co-workers that Ferguson’s behavior is unlawful. I specifically charge that in violation of Title VII of the Civil Rights Act of 1964, as amended and the Illinois Human Rights Act:

- A. I have suffered continuing discrimination because of my gender. On information and belief, this includes being underpaid in comparison to men and to women that Ferguson was not retaliating against. It also includes being subjected to a hostile work environment and retaliation that men were not subjected to.
- B. I have been forced to endure an unbearable hostile work environment.
- C. I have suffered unlawful retaliation.
- D. I have suffered constructive termination of my employment as a radio personality by The Mix.
- E. I have suffered loss of income both historically and prospectively.
- F. I have suffered emotional distress and related physical suffering.

Separately, during the 2020 COVID-19 pandemic, I also suffered a violation of my rights under the American Disabilities Act, as discussed in paragraph 4.

In particular:

1. “The Mix” is an adult contemporary radio station on the station WTMX 101.9-FM. I was the co-host of the Mix’s top rated morning show entitled “Eric in the Morning with Melissa and Whip”.

2. My former co-host, Eric Ferguson, is a serial sexual predator and abuser of women, and was the primary contributor to the hostile work environment I endured. Ferguson, because of his starring role in the “Eric in the Morning” show, holds great influence at the Station over the careers of his co-workers including me.

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Statement of Particulars by Charging Party (Melissa McGurren)  
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For many years, Ferguson has grossly abused his power, and his conduct was the major reason the Station became a hostile working environment.

3. Over the years Ferguson repeatedly made disparaging comments and otherwise harassed me based on my gender creating a hostile working environment. Ferguson's conduct as described in these sub-paragraphs became worse over the years; and became unbearable in 2019 and 2020 leading to my constructive termination in November and December 2020. Without limitation:

- a) From 2005-2020, Ferguson frequently made derogatory and insulting comments on my physical appearance, including comments related to my breasts, my nipples, and my butt. He made these comments on the air, and off the air in the presence of my co-workers and me. He knowingly insulted me, leaving me traumatized and frozen with fear to be in his presence.
- b) In or around April 2011, Ferguson coerced me to wear a bikini and get a spray tan at work, and Ferguson then posted (or caused a video to be posted) to Social Media despite my pleas to not do so. The coercion was that if I did not do what Ferguson was commanding, I risked losing my job. I succumbed to his pressure, and because of the Social Media post, I received many unwanted sexual comments from men on social media.
- c) Often between the years 2009-2020, Ferguson made harassing comments about me leaving the broadcasting studio to go to the bathroom to deal with feminine issues.
- d) In or about 2019, while broadcasting on-air, Ferguson accused me of having hot flashes in a demeaning and condescending tone.
- e) In or about 2019, while broadcasting on-air, Ferguson ridiculed my outfit (a leopard print sweater with my hair styled in a bun) by saying I looked like Ivana Trump, a woman in her 70s (about twenty years older than me). He then, over my objection, had someone take a picture of me and post it to social media asking viewers to vote on whether we looked alike. His ridicule continued off-air and he repeated this type of harassment on other occasions.

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Statement of Particulars by Charging Party (Melissa McGurren)

In the United States Equal Employment Opportunity Commission (Chicago)

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- f) Between 2002 and 2006, Ferguson caused a social media person at the Station to take a picture of my medication at my personal desk and post it to social media despite my vocal objection. This was a gross invasion of my privacy.
- g) Ferguson would yell at, harass, and/or demean me (often on-air while broadcasting) for doing things like clearing my throat, walking in to the studio as a song was ending, misunderstanding something Ferguson said on air, or for simply talking in the studio while we were off-air. This occurred many times since 2010 and became worse in 2019 and 2020.
- h) In May 2019, Ferguson also ridiculed my boyfriend on air, something he did not do to anyone else: not with men (as to their significant others) or to other women that did not make it clear, as did I, that I found his behavior intolerable.
- i) Beginning in January 2019 and continuing through 2020, Ferguson (who had total control of the morning show), replaced me on “bits” or segments of the show in punishment for complaining about him (the retaliation against me is further discussed below). In early March 2020, during the Company retreat in Mexico, Ferguson publicly ridiculed my clothing and appearance throughout the trip. For example, he ridiculed a bathing suit I wore, which had long sleeves, by stating in front of a crowd of my co-workers, and fans, that I looked like an old lady. Similarly, he ridiculed me for a red jumpsuit I wore at a morning broadcast, and, again, this was in public in front of my co-workers.

4. After the COVID-19 pandemic caused many businesses to have employees work from home, Ferguson pressured the morning show on air staff to work from the office. Due to my asthma and other medical issues, I am considered high risk to COVID-19. I requested that (if I had to come to the studio) I work in a studio directly across from Ferguson with a window separating the two of us. This set up worked, but Ferguson, while on air, would ridicule, complain about, and/or harass me for not working in the same studio as him. In June 2020, I went back into the studio to make him stop his harassment, even though I felt very unsafe doing so. Ferguson’s motives in so insisting were to punish me, as opposed to a legitimate business reason. Separately, this incident violated my rights under the Americans With Disabilities Act as I requested reasonable accommodations that my employer

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was willing to provide but then allowed Ferguson to pressure me into working in the same room, without adequate protection against COVID-19.

5. On multiple occasions from 2005 through 2020, Ferguson (who is a married man) would frequently and inappropriately touch many younger female employees, or sometimes younger female listeners, at company events in Chicago or abroad in Mexico during Company retreats.<sup>1</sup> Ferguson engaged in the conduct alleged in this paragraph in front of me and other co-workers. Unmistakably, Ferguson flaunted his power over women in ways intentionally demeaning to all women and this was part of the hostile work environment

6. Over the years, I repeatedly brought my substantial objections to Ferguson's behavior to Station management and my superiors but no one in a position of authority did anything to cause Ferguson to change his terrible behavior. Without limitation:

- a) On dozens of occasions from 2010 to 2018, when Mary Ellen Kachinske was the Station's program director, I repeatedly complained to Kachinske about Ferguson's inappropriate behavior and how his conduct created a hostile working environment. In response, Kachinske (who left the Station in 2018) admitted she wanted Ferguson to behave appropriately and professionally but stated on numerous occasions that nothing could be done because of Ferguson's importance to the Station, as higher management would not allow Kachinske to adequately manage Ferguson.
- b) I also spoke to a former radio host that worked alongside Ferguson at the Station.<sup>2</sup> This radio personality and I had hundreds of conversations about Ferguson's inappropriate behavior and the hostile working environment Ferguson's conduct created between 2006 and 2017. Furthermore, I knew that she had complained, for both of us, to (without limitation) Greg Solk (the program director before Kachinske) and Kachinske. Solk, like Kachinske, did nothing in response to the complaints. Furthermore, I witnessed Ferguson berate, belittle, and ignore this other host on and off the air in retaliation for her complaints about him.

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<sup>1</sup> I can name some of these women but do not do so here in respect of their privacy.

<sup>2</sup> See Footnote One.

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c) Starting in or about April 2019, I spoke over ten times to Jimmy Steal, the Station's program director that replaced Kachinske (and who now has a larger title). These conversations began as early as April 2019, four months after Steal first arrived, and continued into 2020. When I first spoke to Steal, he was new to the Station and I hoped he would make immediate changes when I brought my concerns about Ferguson's conduct to him. I was disappointed, when, after first talking to Steal, nothing was done. In response to my complaints, Steal would tell me to brush off Ferguson's inappropriate and harassing behaviors by saying things like "that's just the way [Ferguson] is and all radio genius's act like that" or asking me why I let Ferguson bother me. After repeated conversations between 2018 and 2020 - which largely took place in his office or over the phone, Steal took no action to remedy the hostile work environment caused by Ferguson. Steal's comments exacerbated my stress as he tried to convince me I needed to change and not Ferguson. As a result I became more anxious because the program director wasn't willing to help.

d) From 2016 to 2020, I also spoke often to John Swanson (the Station producer), Dave Karwowski (the Station marketing director), and Brian Paruch (the Station on air morning news man) about my complaints about Ferguson. These men knew I believed I was subject to an unlawful hostile working environment and disparate treatment.

e) I know that Swanson, Karwowski and Paruch also spoke to Program Director Jimmy Steal (as did I) about my complaints and the hostile work environment created by Ferguson; and I know that Drew Horowitz (the Station Manager) knew of Ferguson's inappropriate behavior. None of these men intervened to stop it.

f) Jeff England, VP and market manager for Hubbard Radio's three stations including The Mix, was also aware of Ferguson's inappropriate behavior and did nothing to stop it.

g) Ferguson's discriminatory, harassing, demeaning and hostile behavior as described above was open and notorious in the Station and amongst Station personnel, but as I have stated, no one did anything. The common response was that we all needed to "protect the quarterback," meaning Ferguson.

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7. The Station's management's utter and continuing failure to do anything about my complaints, along with Steal's insistence to protect Ferguson as opposed to stopping Ferguson's abusive and hostile behavior, caused me great emotional harm.

8. On October 2, 2020, I notified the Station I could not renew my contract with the Station when it expired at the end of 2020 unless the Station put an end to the constant harassment by Ferguson. I did not receive the assurance I was seeking and in fact, Ferguson's conduct became worse.

9. In early November 2020, I asked for two weeks' vacation because I needed a break from the constant harassment at work. Almost immediately, in the week before I could take my vacation, Ferguson, who knew I had been complaining about him, intensified his harassment of me. While we were broadcasting on the air, Ferguson increased his efforts to sabotage my performance by ignoring me, leaving me out of segments or bits, refusing to say my name, and openly mocking me. His treatment was on-air and broadcasted to all our listeners, and it devastated me emotionally and jeopardized my career.

10. The Station knew Ferguson was escalating his mistreatment of me, which I allege to be unlawful retaliation because Ferguson knew I had been complaining about him, yet the Station did nothing.

11. On November 24, 2020, while I was on vacation, I emailed Elizabeth Luptak (who worked Public Affairs for Hubbard Chicago, LLC and doubles as HR for the Station) a comprehensive list describing Ferguson's harassment and the hostile working environment I was enduring. Luptak, acting as the Station HR, sent my complaint to Hubbard Chicago's HR department at the corporate headquarters in Minnesota. A copy of my written complaint is submitted as **Exhibit One** (with the names of coworkers redacted).

12. Shortly before Thanksgiving 2020, the Station placed me on leave of absence (actually an extension of my vacation) while claiming it would investigate my charge; but also said I would be back on the air after the following Tuesday (meaning Wednesday, December 2, 2020 or later).

13. The Station's claim to be sincerely investigating my claims with the intent to bring me back on the air was a lie. While I was allegedly on a short leave of absence, the Station began the process of "rebranding" to remove my name from the show, which placed me in a false and unfavorable light with the listening audience.

Statement of Particulars by Charging Party (Melissa McGurren)  
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And the Station did not commit to taking any actions to protect me from the unbearable misconduct I had accurately described, not only in my November 24, 2020 email but in hundreds of conversations over the years with Station management and my supervisors.

14. By December 3, 2020, through one of my attorneys, I made it clear to the Station and the Company's HR and legal representative I could not and would not return to the Station unless I had adequate assurance there would be no further harassment, hostile work environment, or any other unlawful conduct by Eric Ferguson or anyone else. I did not receive this assurance and was not invited back on the air.

15. On or about December 16, 2020, the Station publicly announced I was not renewing my contract and leaving the Station. The Station's public comments were false and defamatory as they did not state the true reasons for my being off the air and my imminent departure.

16. I allege that my being taken off the air following my complaints about Ferguson and imminent departure from The Mix is a constructive termination because:

- a. My many complaints to the Station's management personnel and my complaint to the Company's HR department were ignored or not treated seriously, and my complaints caused the Company to retaliate against me by allowing my workplace to become unbearable.
- b. The Station's failure to stop Ferguson from mistreating me despite my formal complaint to the Company (after hundreds of complaints within the Station) confirmed my worst fears: That the Company will protect Ferguson no matter how outrageous his conduct becomes.
- c. The Station made it very clear there was nothing I could do to stop Ferguson from continuing to harass me if I tried to return to the Station. The situation as of my last work day had become unbearable to the point no reasonable person in my position, through no fault of my own, could continue to work at The Mix.

17. In summary, I have been continuously discriminated against because of my gender and forced to endure an unbearably hostile work environment and

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unlawful retaliation (culminating in constructive termination) all in violation of Title VII of the Civil Rights Act of 1964, as amended; and also allege a violation of the ADA (paragraph 4).

18. I have suffered substantial emotional distress because of the Title VII and ADA violations I allege. I have sought treatment through therapy.

19. I seek front pay due to my loss of income because of constructive termination.

20. I also seek backpay because, on information and belief, the Station underpaid me and other women over the years as a direct consequence of the hostility towards women that the Station tolerated and therefore encouraged. I believe I was underpaid compared to men in similar or comparable positions; and also as part of the retaliation against me for complaining about Ferguson.

21. I seek all other damages and other relief available under law.



12 / 30 / 2020

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Charging Party, Melissa McGurren

Dated December 30, 2020

## **Exhibit 1**

**Exhibit**  
**Intentionally Removed**

## **Exhibit 3**

McGurren Arbitration Demand

**Exhibit**  
**Intentionally Removed**

# Exhibit 4

McGurren Arbitration Demand

**Exhibit**  
**Intentionally Removed**

FILED  
10/14/2021 2:24 PM  
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# EXHIBIT 2

# Robert Feder

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As pressure mounts, Hubbard Radio takes Eric Ferguson off the air ‘through October’

posted on October 5, 2021 at 4:00 pm by Robert Feder  SHARE  0



Eric Ferguson

While embattled Radio Hall of Famer Eric Ferguson faces **allegations of misconduct** from a growing number of former co-workers, he'll be off the air at least through the end of the month.

In court documents filed Tuesday Melissa McGurren, former morning co-host on **WTMX 101.9-FM**, became the third woman to publicly accuse Ferguson of inappropriate behavior at the Hubbard Radio hot adult-contemporary station. “For many years, Ferguson has grossly abused his power, and his conduct was the major reason the station became a hostile working environment,” she said in the filing.

Jeff England, vice president and market manager of Hubbard Radio Chicago, alerted employees to McGurren’s complaint in an email and braced them for “another round of media stories about Eric’s situation.” Ferguson has not been on the air this week.

“We have made the decision that Eric will not be on the air through October,” England wrote. “We take these allegations seriously and we are confident in the results of multiple investigations we have initiated. But we also owe it to ourselves and our listeners to have a deliberate and thoughtful process about our path forward, and candidly we are not there yet.”

Earlier the company released a statement about taking “concerns about our workplace culture and the experience of our employees very seriously” and said internal and external investigations “found no evidence to corroborate allegations of illegal workplace conduct.” Attorneys

As previously reported, Hubbard Radio has Eric Ferguson off the air through October. Robert Feder for Ferguson also denied the allegations.

Ferguson's fate ultimately rests with Ginny Hubbard Morris, chair and CEO of the Minnesota-based privately-owned parent company of The Mix. Morris has been at the station this week meeting with managers and employees.

Here is the text of England's email to staff:

Good afternoon,

I want you to hear this from me first. Later today, we are anticipating another round of media stories about Eric's situation – including the contents of a complaint made by Melissa McGurren to the EEOC. This is not a new development, and we've thoroughly investigated this matter previously. Suffice it to say that we do not agree with Melissa's characterization of events, but we are committed to following the appropriate process and not litigating this matter in the public or the press. We continue to wish Melissa well in her endeavors.

We have made the decision that Eric will not be on the air through October. We take these allegations seriously and we are confident in the results of multiple investigations we have initiated. But we also owe it to ourselves and our listeners to have a deliberate and thoughtful process about our path forward, and candidly we are not there yet.

I want to take a moment to thank this team for your continued professionalism amid all this. I know this has been a difficult situation, but through it all, you are continuing to show up to work each day and deliver quality programming to our listeners while serving our communities and advertisers. I can't tell you how much I appreciate that. I always want you to be able to be proud to work at Hubbard Chicago, and please know that we have no higher priority than creating and maintaining a safe workplace culture that celebrates all our collective contributions and creativity.

As always, we have an open-door policy, so please don't hesitate to drop a line. I appreciate your trust, openness, and cooperation—and I hope you will always expect the same from me.

Jeff

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About Feder

Robert Feder, a lifelong Chicagoan, has been covering the media beat in his hometown since 1980. He operates his blog under an agreement with the Daily Herald.



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# EXHIBIT 3

In the State of Illinois  
County of DuPage

**DECLARATION OF JENNIFER ASHRAFI**

I, JENNIFER ASHRAFI, being over the age of 18 and having personal knowledge of the following, hereby affirm that if called as a witness, I could competently testify as follows:

1. I reside in Addison, Illinois, within DuPage County.
2. I worked for Hubbard Chicago from 2008 to January 2020. I was the co-host of the afternoon radio show on The Mix (101.9 FM) that aired from 2 pm to 7 pm weekdays (and until 2017, I also had responsibilities on its sister station, The Drive (97.1 FM), which has broadcast from the same location the last several years. I was known to the public as Jennifer Roberts.
3. I quit The Mix in January 2020, and left the radio industry, because I was disgusted by the atmosphere of misogyny, gender discrimination, and hostile work environment that was pervasive at The Mix. The hostile work environment had gotten worse in recent months prompting my resignation.
4. As some examples, out of many I could give, I believe that over the years I was underpaid by The Mix given my duties and my experience and compared to my former male co-host. I could not support my family alone on my salary, but my male counterpart could. I believe this followed a pattern at The Mix, which typecasts its female cohosts as “good girl sidekicks” for the males like my former male co-host or Eric Ferguson on the morning show. The “on the air” subordination of women extends to the entire culture at the station. Eric Ferguson, for example, is allowed to be rude

and dismissive to women without being reprimanded by management. His abusive behavior is open and known by all at The Mix. It is humiliating to watch and de-humanizing to know that nothing can be done because the management at The Mix approved Ferguson's misconduct by their silence in not reprimanding him. I am not a lawyer, but I believe The Mix is guilty of allowing and perpetuating a culture of gender discrimination and hostile work environment to women. It was openly discussed among my former colleagues that the only reason the company would tolerate Eric Ferguson's abuse of women was to protect its revenue stream from his "Eric in the Morning" show at any cost.

5. The mistreatment of women at Hubbard Radio's Chicago stations had been going on for years but had gotten worse. As one example, after the company declared that spouses were no longer invited to office parties, these parties became occasions where many men, not just Eric Ferguson, behaved inappropriately with the women employees. This is one of many examples of micro-aggressions and suggestive comments women at The Mix are expected to endure (in addition to being underpaid and marginalized).

6. By November 2019, I could not stand to be in that hostile work environment another day. In January 2020, I resigned after I lined up another job.

7. In January 2020, I first communicated my resignation to Jimmy Steele who directed me to speak to Jeff England. I did not name any other employee for fear it would lead to retribution against them, but I told Jeff England in words and substance that:

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- A. "You have a problem with women at this company" in reference to the way women are mistreated by Eric Ferguson and by other men in management.
- B. I was leaving because The Mix does not treat me or any women with respect, doesn't pay us fairly, and it has become impossible to stay here in a hostile, humiliating atmosphere.
- C. I told Jeff England that I was "getting the hell out of here" to start a new life outside radio but he and the station might not be so lucky with other women in the future (meaning they might sue). Jeff England said something like "thank you for bringing this to my attention" and asked who he should talk to. I told him I did not want to name anybody, but he should "start with the morning shows" referring both to the morning shows on both The Mix and the Drive. At The Mix, Melissa McGurren and Cynthia DeNicolo were two out of three women working on "Eric in the Morning" at that time so clearly, my reference to the morning shows included them.

8. When I read the statements by Jeff England published by Robert Feder after Melissa resigned in late 2020, to the effect Jeff England and the station were "surprised" that Melissa was resigning, I knew England was lying to protect Eric Ferguson and/or protect his own job. Based on my conversation with Jeff England in January 2020 when I resigned, he knew (and I believe everyone else at The Mix knew)

the station was guilty of allowing Eric Ferguson to get away with abusive, hostile conduct towards Melissa and Cynthia that no woman should ever have to tolerate.

9. In early 2021, I voluntarily related my opinions to the Chicago Tribune that Hubbard Radio has a serious misogyny problem at both The Mix and The Drive.

10. In recent weeks, I have read more stories in the Chicago Tribune and other media relating that both Cynthia DeNicolo and Melissa McGurren have brought claims against Eric Ferguson or The Mix and that, in response, The Mix and Jeff England are calling Cynthia and Melissa liars. The truth is, The Mix and Jeff England are lying when they say in the media that The Mix had supposedly conducted one or more “investigations” of the allegations made by Cynthia and Melissa, and supposedly found no reason to believe Cynthia’s or Melissa’s claims that there was illegal conduct at The Mix. I cannot testify to every detail in each of their cases, but:

A. I know for a fact there has been gender discrimination on pay and job duties, and an abusive, intolerable hostile work environment at The Mix for many years. As to Eric Ferguson, this was wide open and known to all at The Mix.

B. I know for a fact I expressed my belief as to gender discrimination and hostile work environment at The Mix to Jeff England in January 2020.

C. I believe Jeff England and The Mix knew of gender discrimination and hostile work environment even without me telling them. These were the worst kept secrets because everyone at The Mix knew about the abusive

and humiliating way women are treated and everyone knew the owners, Hubbard Radio, had no intention of correcting this terrible problem because they believed that under their format, male hosts like Eric Ferguson were making too much money for them; and that the women didn't matter.

D. I know for a fact Jeff England could not have been "surprised" in late 2020 that Melissa was resigning, that he knew the real reasons, but he wanted to keep the real reasons secret, even if it meant making Melissa look bad in the media. I believe his published comments to Robert Feder when Melissa resigned were intentionally false statements designed to disparage Melissa with the public.

E. I know for a fact that The Mix did not have anyone interview me as part of their claimed "investigation(s)" of the allegations made by Cynthia and Melissa.

F. I know for a fact that, had I been interviewed, it would have been impossible for this alleged "investigation" to conclude there was no truth in what Melissa and Cynthia were alleging.

G. I know for a fact that if Jeff England was truthful with The Mix as to my conversation with him when I resigned in January 2020, or if The Mix took my advice in January 2020 to look closely at the problems on "the morning shows", it would have been impossible for this alleged

“investigation” to conclude there was no truth in what Melissa and Cynthia were alleging.

11. This Declaration presents only a summary of what I believe to be the very serious pattern of unlawful discrimination and hostile work environment at The Mix.

12. I signed this Declaration at the request of attorneys for Melissa McGurren and Cynthia DeNicolo and have authorized those attorneys to use my Declaration for legal purposes as they see fit. I understand that my Declaration will be part of the public record and may be viewed by the public.

Signed under penalty of perjury on October 13, 2021

  
Jennifer Ashrafi (Oct 13, 2021 16:46 CDT)

JENNIFER ASHRAFI

**VERIFICATION**

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that she verily believes the same to be true.

Oct 13, 2021

Dated: \_\_\_\_\_

  
Jennifer Ashrafi (Oct 13, 2021 16:46 CDT)

JENNIFER ASHRAFI